

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 12744 of 1993
With
SPECIAL CIVIL APPLICATION No. 12745 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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DILUBHA D GADHVI - Petitioner(s)

Versus

DIRECTOR & 2 - Respondent(s)

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Appearance :

MR PC KAVINA for Petitioners in both petitions
MR PRACHCHAK AGP for Respondents in both the
petitions

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/12/2005

CAV JUDGMENT

1. As common question of facts and law has arisen in both these petitions, the same are being heard together and disposed of by this common judgement and order.

2. By way of this petition, the respective petitioners have challenged the legality and validity of the orders passed by the Director Adijati Vikas, State of Gujarat dtd.1/10-11/1993 for cancellation of the caste certificate issued in favour of the respective petitioners dtd.24/6/1968 and certificate dtd.23/9/1975 respectively by which it was certified that the respective petitioners belong to Charan Tribe of village Alavani Ness, which is recognised by the Government of Gujarat as Scheduled Tribe.

3. Both the petitioners are brothers. The petitioner of Special Civil Application No.12744 of 1993 obtained certificate dtd.24/6/1968 from Backward Class Welfare Officer, District Panchayat, Junagadh certifying that he belongs to Charan Community which is one of the tribe recognised by the Government of Gujarat as Scheduled Tribe and the certificate was obtained on the basis of his submission that he belongs to and/or his place of origin is Alavani Ness. Thereafter, on the basis of said caste certificate, he got appointment in the Sales Tax Department as an Inspector and thereafter, he also got further promotion.

On the basis of certificate issued by the Backward Class Welfare Officer dtd.24/6/1968 certifying that his brother belongs to Schedule Tribe community, the petitioner of Special Civil Application No.12745 obtained caste certificate dtd.23/9/1975 from the

office of the Mamlatdar, Visavadar certifying that he belongs to Charan Community which is as Schedule tribe Community. It appears from the record that the said petitioner was granted certificate only on the basis of the certificate issued by the District Panchayat, Junagadh in favour of his brother Dilubha Gadhvi - petitioner of Special Civil Application No.12744 of 1993.

4. The petitioner of Special Civil Application No.12744 of 1993 came to be served with a notice from the Director, Social Welfare Department dtd.30/7/1992 asking him to remain present on 4/8/1992 with the proof if any, he may have about the validity of the caste certificate, such as, original caste certificate, school leaving certificate and/or any other document to prove that he and/or his forefathers were originally belongs to Alavani Ness. In the said notice, it was also pointed out that the said documents were required to verify the correctness

of the caste certificate dtd.24/6/1968 issued by the District Social Welfare Officer, District Panchayat, Junagadh.

Similar notice was also served upon the petitioner of Special Civil Application No.12745 of 1993 dtd.6/6/1992 by which, the said petitioner was also directed to remain present before the Director, social Welfare Department on 29/6/1992 with the aforesaid documents and the documents in support of his case that he or his forefathers are origin of village Alecha, Barda and/or Gir Forest, prior to the year 1950. By the said notice, he was informed that the said documents were required to verify the correctness of the certificate dtd.23/9/1975 issued by the Mamlatdar Office, Visavadar.

5. It is the case of the petitioner of Special Civil Application No.12744 of 1993 that he appeared before the respondent No.1 on

4/8/1992 and submitted that all the original documents upon which he could have placed reliance to substantiate his claim about the Schedule Tribe and/or they and/or his forefather belongs to Alavani Ness were submitted in 1968 in the office of the District Panchayat, Backward class Welfare Branch, Junagadh and on the basis of which, the certificate came to be issued. It was also submitted by him that after so many years, he had no materials to the effect that his family hails from Alavani Ness and there was no cause to cancel the certificate.

6. It appears that thereafter by the impugned communication / order dtd.1/11/1993 of the respondent No.2 i.e. the Director, Adijati Development, the caste certificate dtd.24/6/1968 came to be cancelled on the ground that the petitioner has failed to prove that he and/or his forefathers was/were permanent resident of Alavani Ness. Being aggrieved by and dissatisfied

with order / communication dtd.1/10-11/1003, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

7. So far as the Special Civil Application No.12745 of 1993 is concerned, as stated above, the petitioner of said petition came to be served with show cause notice dtd.6/6/1992 and he was directed to remain present on 29/6/1992 and it is the case of the petitioner that he presented himself in the office of respondent No.1 on 29/6/1992 and submitted that after lapse of so many years, he is not in a position to submit the proof and relied upon the caste certificate granted to his brother i.e. petitioner of Special Civil Application No.12745 of 1993. That thereafter, the said petitioner came to be served with order dtd./11/1993 passed by the respondent No.2 i.e. the Director, Adijati Department, cancelling the caste certificate dtd.23/9/1975 on

the ground that the petitioner has failed to satisfy and prove that he and/or his forefather was/were resident of Alavani Ness. Being aggrieved by and satisfied with the said order dtd.1/11/1993, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

8. Mr.P.C. Kavina, learned advocate appearing on behalf of the respective petitioners has made common submissions in both the petitions and therefore, the same are being considered by this common judgement and order. Mr.Kavina, learned advocate appearing on behalf of the respective petitioners has submitted that the certificate came to be issued in the year 1968 which came to be reviewed and/or the validity of the said certificate came to be considered in the year 1992 i.e. almost after a period of 24 years and too without explaining the inordinate delay, the respondent could not have

initiated the proceedings after unreasonable period. He has also further submitted that the petitioners could not have been asked to prove that they belong to Charan community from Alavani Ness, after a period of 22 to 24 years. He has also further submitted all the necessary documents and the proof were submitted before the Backward Class Welfare Officer, District Panchayat, Junagadh in the year 1968 and on the basis of that, the certificate came to be issued by the said authority after satisfying itself and the certificate itself is a proof that the petitioner was resident of Alavani Ness. He has also further submitted that it is unreasonable to direct the petitioners to submit the documents which were produced in the year 1968 and it is unreasonable to expect to retain all the materials and the document till 1992 and the said expectation itself is unreasonable. He has also further submitted that the show cause notice was issued by one authority i.e. the respondent No.1

and the order came to be passed by by the another authority i.e. respondent No.2 and therefore, the same is in breach of the principle of natural justice and hence the impugned orders are required to be quashed and set aside. He has also further submitted that while passing the order, the respondent No.2 authority has relied upon the statement of Shambhubhai Bhagvanbhai Dholariya of village Kalsari dtd.3/3/1992 to the effect that Dadbha, father of the petitioner was resident of village Kalsari and he has 3 sons and said Dadbha has left village Kalsari for village Visavadar before 30 years and the said statement has not been given to the petitioners to controvert the same and therefore, the impugned orders are in breach of the principle of natural justice and hence the same deserves to be quashed and set aside.

9. Mr.Kavina, learned advocate appearing on behalf of the petitioners has relied upon the

following judgments;

(1)AIR 1965 SC 1578

(Sri-la Sri Subramania Desika Gnanasambanda Pandarasannidi Vs. State of Madras and anr.)

(2)AIR 1971 Punjab and Hariyana 437 (Salig Ram and anr. Vs. Shiv Shankar and ors.)

(3)AIR 1959 SC 308 (Gullapalli Nageswara Rao and ors. Vs. Andhra Pradesh State road Transport Corporation and anr.)

(4)1996 (3) GLR 338 (Agricultural Produce Market Committee, Rajkot Vs. Rajkot Municipal Corporation)

10. Relying upon the judgement of the Hon'ble Supreme Court in the case of Sri-la Sri Subramania Desika Gnanasambanda Pandarasannidi (Supra) and the judgement of the Punjab and Hariyana High Court in the case of Salig Ram and anr. Vs. Shiv Shankar and ors. (Supra), Mr.Kavina has submitted that the pleadings in the Affidavit-in-rejoinder are sufficient and can be

considered by the Court as pleadings in the main Special Civil Application. This submission is made in view of the submissions on behalf of the learned AGP that so far as the contention on behalf of the petitioners with regard to non-supply of the copy of the statement of one Shambhubhai Bhagvanbhai Dholariya, has not been taken in the main Special Civil Applications and there are no pleadings to that effect. Relying upon the judgement of Gullapalli Nageswara Rao (Supra) as well as the judgement of this Court in the case of A.P.M.C., Rajkot. (Supra), Mr.Kavina has submitted that if hearing is given by one authority and the decision is by another authority then the order is vitiated as the same is in breach of principle of natural justice. Relying upon para 6 of the judgement of the Division Bench of this Court rendered in Letters Patent Appeal No.1670 of 1999, Mr.Kavina has submitted that if the Mamlatdar has any reason or material to doubt the correctness of such

entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries and in the present case, no other material is given by the authority along with the show cause notices.

11. Mr.Prachchhak, learned AGP while opposing both the petitions and supporting the impugned orders has submitted that the petitioners have miserably failed to prove and establish that they and/or their forefathers were resident of Alavani Ness prior to the year 1950 and the burden is upon them to prove that they and/or their forefathers were resident of Alavani Ness and they were Charan of Alavani Ness. He has also further submitted that on appreciation of evidence and after giving opportunity to the petitioners, the appropriate authority has specifically held that the father of the petitioners named Dadbha was residing at village Kalsari and that he has left village Kalsari for

Visavadar prior to 30 years. He has also further submitted that the competent authority has also considered the school leaving certificates of the respective petitioners. So far as the petitioner of Special Civil Application No.12744 of 1993 is concerned, in his school leaving certificate it was mentioned that he belongs to Charan community and his place of birth is Keshod. So far as the petitioner No.12745 of 1993 is concerned, in his school leaving certificate, it is mentioned that he belongs to Charan Community and his place of birth is village Kalsari dtd.20/12/1951. The authority has also considered the school leaving certificate of his third brother in which his community is shown as Parajiya Charan (Hindu) and his place of birth is mentioned as Kalsari.

12. Relying upon the judgments of the Hon'ble Supreme Court in the case of Kum.Madhuri Patil Vs. Additional Commissioner, Tribal Development and ors., reported in (1994) 6 SCC 241 and in the

case of Lilikutti Vs. the Scrutiny Committee, SC-ST and ors, reported in 2005 (8) Scale 288, Mr.Prachchhak ha requested to dismiss both the petitions. Relying upon the judgement of the Division Bench of this Court rendered in the case of Letters Patent Appeal No.1670 of 1999 more particularly para 5, Mr.Prachchhak has submitted that as held by the Division Bench, the burden can be shifted to prove the certificate and/or to prove that he belongs to a particular community even after a period of 33 years.

13. So far as non-supply of the statement of Shambhubhai Bhagvanbhai Dholariya is concerned, Mr.Prachhak, learned AGP has submitted that the impugned order is not solely based on the statement of said Shambhubhai and the said statement is in aid of the finding arrived at by the authority and that in fact, the burden is upon the petitioners to prove that they belong to Charan community from Alavani Ness which the

petitioners have failed to prove and therefore, it is submitted that on that ground, the impugned orders are not required to be quashed and set aside.

14. Meeting with the submissions with regard to the hearing by one authority and order passed by another authority, Mr.Prachchhak, learned AGP has submitted that the office of the respondent No.1 was bifurcated in the office of respondent Nos.1 and 2 and the entire work related to Schedule Tribe was transferred to the office of respondent No.2 w.e.f. 31/7/1993 and therefore, the order came to be passed under the signature of respondent No.2 who is a competent authority and therefore, it cannot be said that the order passed by the respondent No.2 is in breach of principle of natural justice. It is submitted that ample opportunity was given by the competent authority but the petitioners failed to prove any documentary evidence and/or any

material showing that they belong to Charan community from Alavani Ness. It is also further submitted by him that the petitioners have never submitted the documents alleged to have been produced by them before the District Panchayat in the year 1968 on the basis of which caste certificate was issued in 1968.

Consequently, it is requested to dismiss both the petitions as the petitioners do not belong to Charan Community from Alavani Ness and the Caste Certificates issued in their favour certifying that they belong to Schedule Tribe cannot be continued as now it is found that they have wrongly obtained the benefits of Certificate of Schedule Tribe issued by the competent authority in their favour. Therefore, it is requested to dismiss both the petitions with costs.

15. Heard the learned advocates appearing on

behalf of the parties. Having heard the learned advocates appearing on behalf of the parties, considering the material on record as well as the impugned orders, it is clear that ample opportunity was given to the petitioners to submit the relevant evidences in support of their claim that they belong to Schedule Tribe and they and/or their forefathers were belonging to and resident of Alavani Ness. It is the contention on behalf of the petitioners that necessary documentary evidences were produced before the competent authority at the relevant time when the caste certificates in their favour came to be issued and after long time and many years, the petitioners are called upon to produce the documentary evidences in their support, which were produced before the authority who has issued the caste certificate. It is also the contention on behalf of the petitioners that on going through the documentary evidences at the relevant time the appropriate authority had issued the

caste certificates. It is required to be noted that none of the petitioners have stated in the petition and/or even in the rejoinder which documents and/or documentary evidences were produced before the authority at the relevant time who issued the caste certificate. Nothing has been mentioned which documents came to be considered by the authority while issuing caste certificates. Therefore, the delay is no ground for not producing any documentary evidence in support of their claim that they belong to Schedule Tribe community. As held by the Hon'ble Supreme Court in the case of Director of Tribal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and anr., reported in (1995) 4 SCC 32, burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. It is the contention on behalf of the petitioners that the caste certificates issued by the

competent authority itself are conclusive proof. In this regard, it is required to be noted that the very certificates are under scrutiny and the petitioners are required to prove by documentary evidence other than the caste certificates that they and/or their forefathers were belonging to Alavani Ness and belong to Schedule Tribe community. As stated above, no documentary evidence has been produced by the respective petitioners in support of their claim of having Schedule Tribe Community and that their forefathers were belonging to and resident of Alavani Ness which is recognised as Schedule Tribe. On the contrary, the authority has passed the impugned orders considering the other documentary evidences such as School Leaving Certificate of the petitioners and their brothers and other circumstances and documentary evidences for coming to the specific conclusion and has recorded finding that the father of the petitioners was residing at village Kalsari and

that he was born at Keshod. Thus, the finding recorded by the Director, Adijati Vikas who has passed the impugned order is based upon cogent evidences and is based on appreciation of such evidences. As held by the Hon'ble Supreme Court in the case of Kumari Madhuri Patil and Anr. (Supra), the High Court is not a court of appeal to appreciate the evidences. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court, subject to limitation of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the finding. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding.

Thus, in view of the above, it cannot be said that the impugned orders passed by the Director are in any way illegal and/or arbitrary and/or suffers from non-application of mind or principle of natural justice.

16. So far as the contention on behalf of the petitioners that the Mamlatdar and Appropriate authority if not satisfied with the entry in the Vigat Darshak Card and/or in the present case, the Certificates and has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries and for the above submission, Mr.Kavina has relied upon some observations made in para 6 of the judgement of the Division bench of this Court rendered in LPA No.1670 of 1999. It is required to be noted that the judgement is required to be read as a whole and the petitioners cannot choose only few lines which

according to them supports their contentions and submissions. If the judgement of the Division Bench is read as a whole, the sum and substance of the said judgement is that the production of Vigat Darshak Card by itself is not to be considered to be sufficient proof and the contention on behalf of the person who claims to be Schedule Tribe community that the Mamlatdar should issue caste certificate in favour of the person on the basis of Vigat Darshak Card itself without calling upon the applicant to furnish any other or further proof in this regard has been negatived. It has also been held by the Division Bench in the said judgement that before issuing caste certificate, it is always open for the concerned Mamlatdar to receive relevant answer and production of the relevant materials so that the Committee may take appropriate decision based on such material. It is also observed by the Division bench that the burden of proof of social status is always on the person who profess

it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise.

As stated above, the petitioners have not produced any documentary evidence in support of their claim that their parents or forefathers were permanent resident of Alavani Ness and that they belong to Schedule Tribe and considering the material available on record, if the impugned orders are passed cancelling the caste certificate issued in favour of respective petitioners, it cannot be said that the same are in any way illegal and/or arbitrary which require to be quashed and set aside by this Court in exercise of the powers under Article 226/227 of the Constitution of India.

17. So far as the next contention on behalf of the petitioners that the show cause notices are issued by one authority and the impugned

orders are passed by the another authority and therefore, the same are in breach of the principle of natural justice. In this regard, it is required to be noted that at the relevant time when the show cause notices were issued, the powers were with one authority and thereafter, the powers were given to another authority and the impugned orders are passed by the authority considering the materials on record i.e. School Leaving Certificates and other circumstances and ample opportunity was given to the petitioners and so far as the petitioners are concerned, they have not submitted any documentary evidence in support of their claim of belonging to Schedule Tribe and Considering the above facts, it cannot be said that the impugned orders are in breach of the principle of natural justice. Even the petitioners have not shown any prejudice caused to them. Under the circumstances, the contention of the petitioners that the impugned orders are in breach of the principle of natural justice,

cannot be accepted.

18. So far as the contention on behalf of the petitioners that the authority has relied upon the statement of one Shambhubhai Bhagvanbhai Dholariya for arriving at the conclusion that the father of the petitioners was belonging to village Kalsari and that he has left village Kalsari since last 30 years and has gone to reside Visavadar, but copy thereof, has not been supplied to the petitioners to controvert the same and therefore, the impugned order is in breach of the principle of natural justice. In this regard, it is required to be noted that first of all the impugned orders are not based solely on the said statement. It appears that the said statement has been relied in aid and in support of the finding recorded by the authority. As such, as stated above, if the petitioners assert that they belong to Schedule Tribe and their forefathers were belonging to Alavani Ness,

they are required to submit necessary documentary evidences, which the petitioners have failed to produce and therefore, merely because statement of said Shambhubhai is not supplied to the petitioners, it cannot be said that the impugned orders are in breach of the principle of natural justice and the same are required to be quashed and set aside. Even without relying upon the said statement and in view of the fact that petitioners have not produced any documentary evidence, the authority could have passed the impugned orders quashing and setting aside the caste certificate by holding that the petitioners have not produced any documentary evidence in support of their case. Under the circumstances, the impugned orders are not required to be quashed and set aside on that ground. This court is not discussing the judgments upon which, learned counsel for the petitioners has placed reliance in support of his contention that the pleadings in the Rejoinder-in-Affidavit are

sufficient and can be consider, as without entering into the said controversy, this court has considered the submissions on behalf of the petitioners with regard to non-supply of the statement of said Shambhubhai which is taken for the first time in the Rejoinder-in-Affidavit and has dealt with the same as aforesaid.

19. So far as Special Civil Application No. 12745 of 1993 is concerned, the petitioner of said petition while obtaining caste certificate has simply relied upon the caste certificate issued in favour of his brother named Dilubha Dadbha Gadhvi i.e. petitioner of Special Civil Application No.12744 of 1993 and has not produced any documentary evidence either before the authority who has issued the certificate or even before the Director or even before this Court, in support of his claim of belonging to Schedule Tribe and/or his forefathers being resident of Alavani Ness.

20. For the reasons stated above and considering the judgements of the Hon'ble Supreme Court in the case of Kum.Madhuri Patil and ors. (Supra) and in the case of Director of Tribal Welfare, Government of Andhra Pradesh (Supra) and the judgment of the Division bench of this Court rendered in Letters Patent Appeal No.1670 of 1999 and considering the fact that the petitioners have not produced any documentary evidence in support of their claim, it cannot be said that the impugned orders passed by the Director, Adijati Vikas which are based upon the appreciation of evidence on record, such as, School Leaving Certificate, Village Form No.7/12 etc., are in any way illegal, arbitrary and/or perverse and/or suffers from non-application of mind or principle of natural justice. Under the circumstances, both the petitions are required to be dismissed and are accordingly dismissed. Rule is discharged with no order as to costs. Ad-

interim relief granted earlier stands vacated forthwith.

At this stage, learned advocate appearing on behalf of the petitioners prays for extension of ad-interim relief granted earlier and continued till today. In the facts and circumstances of the case, the ad-interim relief granted earlier is directed to be continued till 31/1/2006.

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(M.R.SHAH, J.)